

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA 1925/1991

Date of decision: 19.07.1993

Shri Suresh Kumar

...Petitioner

Versus

Commissioner of Police & Another

...Respondents

For the Petitioner

...Shri A.S. Grewal, Counsel

For the Respondents

...Shri Ashok Kashyap, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

1. To be referred to the Reporters or not?

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The order dated 28.08.1990 passed by the Deputy Commissioner of Police terminating the services of the petitioner as a Constable (Driver) is being impugned in the present application. The impugned order has been passed in purported exercise of power under sub-rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965. The officer concerned has purported to terminate the services of the petitioner forthwith. We may state that no reasons has been given for exercise of power.

2. A counter-affidavit has been filed on behalf of the respondents. In it, the material averments are these. The petitioner was appointed as Constable (Driver) in Delhi Police w.e.f. 5.5.1989. Even though he (the petitioner) was involved in Case FIR No.69 dated 6.5.1988 under Section 447/34 IPC, he concealed this fact in the attestation form in order to engineer his appointment in the Delhi Police through unfair means. Even after his appointment in the Delhi Police, a case FIR No.41/1990 dated 7.5.1990 under Section 324/34 IPC was registered against him. Again the petitioner did not intimate to his officers about his alleged involvement in the

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case FIR. The department on receipt of complaint from Shri Kishan Gopal s/o Shri Himmat Singh against the petitioner regarding his involvement in the case FIR No.41/90 ordered for an enquiry into the matter which was thereupon found to be correct. On 28.08.1990 the competent authority in view of the involvement of the petitioner in criminal cases and his conduct in concealing the fact from the department with sole motive of seeking appointment in the Delhi Police, was pleased to terminate his services vide order No.8856-8915/SIP dated 28.08.1990.

3. In the rejoinder-affidavit filed by the petitioner it is denied that he was involved in case FIR No.69 dated 6.5.88 under Section 447/34 IPC. As regards case FIR No.41/90 dated 7.5.90 under Section 324/34 IPC, it is asserted that the petitioner was on duty at the residence of Shri Jagdish Tytler, Minister, when the incident occurred. Therefore, the fact stated in the said FIR was false.

4. The counsel for the petitioner has produced before us a photostat copy of the charge-sheet filed by the Police before the competent criminal court which came into existence as a result of the investigation of FIR 69 dated 6.5.88. In this charge-sheet there are 7 accused, however, the petitioner is not one of them. A photostat copy of the charge framed by the Metropolitan Magistrate on 30.11.1988 in the said criminal case has also been produced before us. This shows that the charges were framed against those mentioned in the alleged charge-sheet. The petitioner did not figure in it. These documents substantiate the averments made by the petitioner in the rejoinder-affidavit that he was not involved in case FIR No.69 dated 6.5.88. It is thus established that the impugned order is ^{based} ~~passed~~ on one of the considerations which is non-existent. We have already ^{referred to} ~~extracted~~ the relevant portion of the order. The dominant reason, in our opinion, ^{which} ~~would~~ impel ^{led} the passing of the impugned order is that the petitioner, after concealing the material fact that he was arrayed as one of the accused in FIR No.69 dated 6.5.1988, got appointment in the Delhi Police. If this reason disappears, it is doubtful whether the authority concerned ^{would} have exercised power under Rule 5 to pass an order terminating the services of the petitioner. We have already indicated that no reason

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has been given in the impugned order at all. It is not the case of the respondents in the counter-affidavit that the work of the petitioner was not satisfactory and the officer concerned did not find him fit to be kept in police force.

5. The petitioner addressed a representation to the Commissioner of Police, Delhi. A true copy of which has been filed as Annexure-B to the application. In it, the material averments are:-

" The petitioner understands that the DCP, North West District, Delhi sent a false report relating to his alleged arrest in another case FIR No.69 dated 6.5.88 under Section 447;34 IPC, P.S. Narela, Delhi. It would not be out of place to mention here that the petitioner was not arrested in this case before his appointment in the Delhi Police. When he was arrested in the case FIR No.69 dated 6.5.88 under section 447;34 IPC the question of his concealing the arrest at the time of appointment did not arise at all. The authorities it appear have erroneously taken it that the petitioner concealed the facts of his arrest in a case dated 6.5.88 and made the basis for termination of his services. The DCP Security, New Delhi should have got verified the facts from the DCP, North West District, Delhi by calling for the concerned case file or judicial file from the quarter concerned. Since the termination of the petitioner is by way of punishment the order the DCP Security New Delhi, No.8856-8915/SIP-Security, dated 28.8.1990 is liable to be quashed".

6. The petitioner was informed on 16.11.1990 by the Deputy Commissioner of Police that his representation had been considered by the Commissioner of Police, Delhi and the same have been rejected. No reason is given in the communication as to why his representation was rejected. In the counter-affidavit also there is nothing to show that his representation was considered. The fact that the

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petitioner made a categorical averment in his representation that he was not involved in case FIR 69 dated 6.5.1988 aforementioned, the fact that no reason has been given for not accepting the averment made in that behalf in his representation are indicative that the petitioner was not involved in case FIR 69. A copy of the order of the Commissioner of Police too has not been filed.

7. It is true that in exercise of power under Rule 5 it is not necessary either to record any reason or to give any opportunity to the Government servant. This argument is not open to the respondents in so far as giving of reasons are concerned. For reasons best known to the respondents, reasons have been given in the counter affidavit. Once the reasons are before us, it becomes our duty to go into the question as to whether they are relevant or irrelevant or existent or non-existent.

8. In the facts and circumstances of the case, it is clear that the impugned order was passed because some person filed a complaint against the petitioner and on that basis an enquiry was held in which it was found that he was involved in the subsequent FIR 41/90 dated 7.5.1990. In these circumstances, the petitioner, in our opinion was entitled to some sort of hearing before even an order of termination simpliciter could be passed. This having not been done, an additional reason exists for interfering with the impugned order.

9. In the result, this petition succeeds and is allowed. The impugned order dated 28.08.1990 is quashed. The petitioner shall be reinstated with back wages. The necessary order for reinstatement shall be passed and back wages paid within a period of one month from the date of presentation of a certified copy of this order by the petitioner before the relevant authority.

10. With these directions, this application is disposed of finally but without any order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMFBER (A)
19.07.1993

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN
19.07.1993